

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

LINDABETH RIVERA, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No.: 1:16-cv-02714

Judge: Honorable Edmond E. Chang

Magistrate Michael T. Mason

JOSEPH WEISS, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No.: 1:16-cv-02870

Judge: Honorable Edmond E. Chang

Magistrate Michael T. Mason

**GOOGLE INC.'S CONSOLIDATED MOTION TO AMEND THE COURT'S
FEBRUARY 27, 2017 MEMORANDUM OPINION AND ORDER TO INCLUDE A
CERTIFICATION UNDER 28 U.S.C. § 1292(b) AND MOTION TO STAY
PROCEEDINGS PENDING APPEAL**

Defendant Google Inc. ("Google") hereby moves this Court for an order to amend the Court's February 27, 2017 Memorandum Opinion and Order ("the Order") to include a certification under 28 U.S.C. § 1292(b) and to stay the proceedings pending appeal. In support of this Motion, Google states as follows:

1. In the Order, this Court denied Google's Motion to Dismiss the Complaint. First, it rejected Google's interpretation of the term "biometric identifier," holding that the definition includes information derived from photographs. Order at 6-21. Second, the Court agreed with Google that BIPA does not apply extraterritorially, but found that further factual development was necessary to determine where the alleged violations of BIPA occurred. *Id.* at 21-26.

Finally, the Court found that further factual development was also necessary to assess Google's Dormant Commerce Clause argument. *Id.* at 26-30

2. Google now asks this Court to amend the Order denying Google's motion to dismiss to include a section 1292(b) certification for interlocutory appeal. In particular, the following question satisfies the criteria of section 1292(b): whether the term "biometric identifier," as defined in BIPA, 740 ILCS 14/10, includes information derived from photographs.

3. Google submits that the requirements set forth in 28 U.S.C. § 1292(b) for certification are satisfied here: the question to be certified "involves a controlling question of law as to which there is substantial ground for difference of opinion" and "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Interpreting that provision, the Seventh Circuit has explained that immediate appeal is appropriate when "(1) the appeal presents a question of law; (2) it is controlling; (3) it is contestable; (4) its resolution will expedite the resolution of the litigation, and (5) the petition to appeal is filed in the district court within a reasonable amount of time after entry of the order sought to be appealed." *Boim v. Quranic Literacy Inst. & Holy Land Found. for Relief & Dev.*, 291 F.3d 1000, 1007 (7th Cir. 2002) (citing *Ahrenholz*, 219 F.3d at 675). Google's request for section 1292(b) certification meets all five of those criteria.

4. Google is contemporaneously filing a Memorandum in Support of this Motion.

WHEREFORE, Google respectfully requests that this Court amend the February 27, 2017 Order to include a certification under 28 U.S.C. § 1292(b), to stay the proceedings pending appeal and for such other and further relief that the Court deems necessary in the interests of justice.

Dated: March 9, 2017

GOOGLE INC.,

By: /s/ Neal Kumar Katyal

Neal Kumar Katyal

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